

## **REMARKS**

In the Office Action dated August 8, 2007, claims 15-32 were presented for examination. Claims 15-32 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Claims 15, 21, and 27 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claims 15-32 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 15-32 were rejected under 35 U.S.C. §102(a) as being anticipated by Applicant's Admitted Prior Art (AAPA).

The following remarks are provided in support of the pending claims and responsive to the Office Action of August 7, 2007 for the pending application.

### **I. Interview Summary**

In response to the Examiner's Interview of November 6, 2007, Applicant's Attorney hereby submits a summary of the interview.

On November 6, 2007, Applicants' Attorney and Examiner Filipczyk met for an in-person interview at the U.S. Patent and Trademark Office. There was no exhibit or demonstration of the invention provided. The claims discussed during the interview included outstanding claim 15 as an exemplary claim. The prior art reference, AAPA, was discussed as it was the sole prior art rejection of the outstanding claims in the prior Office Action.

This interview took place following issuance of a Non-Final Office Action issued in response to a Request for Continued Examination (RCE). Applicant's Attorney had requested an interview after submission of the RCE and prior to action by the Examiner, but this request was denied. Accordingly, the interview took place following issuance of a Non-Final Office Action issued after the submission of the RCE. The rejections under 35 U.S.C. §§101, 112, and 102 were discussed, as well as proposals to overcome these rejections. These included the claiming of the tree structure, hierarchy, etc., as well as a tangible result. Applicant has attached an

amendment to the claims, and specifically an amendment to the independent claims in compliance with the discussion during the interview. Accordingly, it is Applicant's position that the amendments presented herein should overcome the rejections under 35 U.S.C. §§101, 112, and 102.

## **II. Rejection Under 35 U.S.C. §101**

In the Office Action dated August 7, 2007, the Examiner assigned to the application rejected claims 15-32 under 35 U.S.C. §101, as being directed to non-statutory subject matter. More specifically, the Examiner indicated that "independent claims 15, 21 and 27 do not involve transformation of article or physical object to a different state or thing, they merely recite processing data items."<sup>1</sup> Applicant has amended each of claims 15, 21, and 27 to recite that the merged data items form a single output stream. The initial state of the output stream 500 is shown in Fig. 5A. See paragraph 0042. At the end of the replacement selection process, the output stream 500 is shown in Fig. 5L as a single stream of data. It is the single output stream formed by the merge of multiple input stream that is a tangible and concrete result. The amendment presented herein to claim the formed single output stream does not add any new subject matter. Accordingly, Applicant respectfully requests that the Examiner remove the rejection of claims 15-32 under 35 U.S.C. §101.

## **III. Rejection of Claims 1 under 35 U.S.C. §112, first paragraph**

In the Office Action dated August 7, 2007, the Examiner assigned to the application rejected claims 15, 21, and 27 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

More specifically, the Examiner has raised an issue with the phrase "creating a binary tree." As shown in the specification, Figs. 5A - 5L are tree diagrams used to demonstrate the selection replacement algorithm as claimed by Applicant. Since the Examiner has raised a

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<sup>1</sup>See Office Action dated January 18, 2007, Page 2.

concern with the term “binary tree” Applicant has amended the claims to remove the term “binary” and allow the term “tree” to remain. During the interview of November 6, 2007, this was agreed upon by the Examiner.

With respect to the term “hierarchical manner,” this is described in the specification on pages 8-13 in the manner in which the tree traversal is described in detail. However, since the Examiner has placed this rejection in the claim, Applicant has removed this language and replaced it with language that describes movement in the tree structure from a leaf node to a root node. It is known in the art that a tree structure includes a root node, intermediate nodes (sometimes called child nodes), and external nodes (also known as leaf nodes - which do not include any child nodes). See Exhibit A attached hereto.

With respect to “compiling a single output stream,” Applicant has removed this language and replaced it with language in the form of “merging data items”. The term “merge” with respect to the data in the input streams is used through the application. Exemplary uses can be found in paragraphs 0035, 0051, 0054, and 0055. Accordingly, no new matter has been added to the application with the amendment presented herein.

With respect to “remembering at each node,” Applicant has removed this phrase and replaced it with “omitting a second node identifier comparison.” Support for this amendment can be found in the specification on page 12, lines 49-50. Accordingly, not new matter has been added to the application with the amendment presented herein.

With respect to the clause “storing said compiled single output stream . . .,” Applicant has removed this language from the claims. There is ample support for this language in the Specification, however, in effort to move prosecution forward, Applicant has removed this limitation from the claims.

Applicant has addressed each of the element of the rejection set forth in this paragraph by

either removing the rejection phrase or amending it with replacement language. In each instance where there is a replacement language, support is shown in the Specification by either page and line number, paragraph number, or a drawing figure citation. Accordingly, Applicant respectfully requests that the Examiner remove the rejection under 35 U.S.C. §112, first paragraph.

#### **IV. Rejection of claims 15-32 under 35 U.S.C. §112, second paragraph**

In the Office Action dated August 7, 2007, the Examiner assigned to the application rejected claims 15-32 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Regarding the term “external nodes” in the tree structure, Applicant has amended the claim to refer to the tree structure as having a root node, a non-root node, and leaf nodes. This is shown in Fig. 5A - 5L. Furthermore, as shown in Exhibit A, a tree structure by definition will include these nodes. With respect to “hierarchical manner,” the structure of the tree by definition shows a hierarchy. However, since the Examiner continues to raise this rejection, Applicant has removed this term from the pending claims. With respect to “unequal,” Applicant has amended the claim to remove this language. With respect to “compiling a single output,” Applicant respectfully disagrees with the Examiner. Applicant is claiming merging data to form a single output stream. See definition of “merge” attached as Exhibit B. However, in an effort to move forward prosecution, Applicant has amended the claims to remove this phrase. Finally, with respect to the phrases “identification process” and “remembering,” Applicant has removed these phrases from the claims and replaced them with alternate language that is supported in the specification. Accordingly, Applicant respectfully requests that the Examiner remove this rejection.

Based upon the amendments to claims 15, 21, and 27, it is Applicant’s position that all issues of indefiniteness have been removed. Accordingly, Applicant respectfully requests

removal of the rejection of claims 15-32 under 35 U.S.C. §112, second paragraph, and respectfully requests that the Examiner direct allowance thereof.

**V. Rejection of claims 15-32 under 35 U.S.C. §102(b)**

In the Office Action dated August 7, 2007, the Examiner assigned to the application rejected claims 15-32 under 35 U.S.C. §102(a) as being anticipated by Applicant's Admitted Prior Art (*AAPA*).

The remarks pertaining to *AAPA* provided in the response to the prior Office Actions are hereby incorporated by reference.

During the interview of November 6, 2007, the points of novelty of the invention were discussed in view of the prior art and *AAPA*. It was mentioned by the Examiner that the prior art does not teach the omission of a second node identifier comparison. Applicant has amended each of the independent claims to clearly claim this element. Support for this amendment is found in the specification on page 12, lines 49-50. Applicant is claiming a first comparison, as well as an omission of a second comparison under limited circumstances. The *AAPA* clearly states that it requires unnecessary key comparisons when merging. See Page 1, line 8. Accordingly, the *AAPA* clearly identifies that there is more than one key comparison.

Applicant's claimed invention removes any unnecessary key comparisons in the claims presented herein by omitting a second key comparison under limited circumstances. The *AAPA* does not teach the concept of remembering duplicate data items in the manner claimed by Applicant. Rather, the *AAPA* teaches the elements used to promote a data item, which requires multiple comparisons. See page 1, paragraph 6, lines 5-6.

Since *AAPA* does not teach all of the limitations set forth in Applicant's amended claims, it is Applicant's position that the rejection under *AAPA* should be removed. Accordingly, Applicant respectfully requests removal of the rejection of the pending claims under 35 U.S.C.

§102(a), and that the Examiner direct allowance of claims 15-32.

## **VI. Conclusion**

Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. No new subject matter has been added to the application with the amendment to the claims presented herewith. Furthermore, Applicant is not conceding in this application that the claims are not patentable over the art cited by the Examiner, as the present claim amendments and cancellations are only for facilitating expeditious prosecution of the allowable subject matter noted by the Examiner. Applicant respectfully reserves the right to pursue these and other claims in one or more continuations and/or divisional patent applications. Accordingly, Applicants request that the Examiner indicate allowability of claims 15-32, and that the application pass to issue. If the Examiner believes, for any reason, that personal communication will expedite prosecution of the application, the Examiner is hereby invited to telephone the undersigned at the number provided.

Respectfully submitted,

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